

IN THE COURT OF COMMON PLEAS FOR
PAULDING COUNTY, OHIO

BARBARA JEAN MORRIS
9541 Rd 71
Paulding, OH 45879

RONNIE AND VICTORIA KADESCH
11701 Rd 71
Paulding, OH 45879

RICHARD KING
6601 Rd 124
Payne, OH 45880

THE MID-ATLANTIC RENEWABLE
ENERGY COALITION
212 West Gay Street
West Chester, PA 19380

Plaintiffs,

v.

THE STATE OF OHIO
c/o Attorney General Mike DeWine
30 East Broad Street, 14th Floor
Columbus, Ohio 43215

Defendant.

Case No. CI 18 190
Judge _____

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FILED
PAULDING COUNTY
ANN E. PEASE
CLERK OF COURTS

COMPLAINT FOR DECLARATORY JUDGMENT

Now comes Plaintiffs, Barbara Jean Morris, Ronnie and Victoria Kadesch, Richard King, and the Mid-Atlantic Renewable Energy Coalition (“MAREC”) (Collectively, “Plaintiffs”), by and through undersigned counsel, who respectfully submit for their Complaint against Defendant The State of Ohio (hereinafter the “State”) as follows:

1. This is an action seeking declaratory relief against certain portions of Substitute House Bill 483 (“H.B. 483”), which passed the Ohio House of Representatives (“House”) and the Ohio Senate (“Senate”) on June 4, 2014 and was signed into law on June 16, 2014.

PARTIES

2. Plaintiff Barbara Jean Morris owns agricultural land in Paulding County, Ohio, resides in or around Paulding County, Ohio, and has been unable under the state’s current wind turbine setback law to place a wind turbine on her property, despite a commercial-scale wind facility actively being developed in the area.

3. Plaintiffs Ronnie and Victoria Kadesch own agricultural land in Paulding County, Ohio, reside in or around Paulding County, Ohio, and have been unable under the state’s current wind turbine setback law to place a wind turbine on their property, despite a commercial-scale wind facility actively being developed in the area.

4. Plaintiff Richard King owns agricultural land in Paulding County, Ohio, resides in or around Paulding County, Ohio, and has been unable under the state’s current wind turbine setback law to place a wind turbine on his property, despite a commercial-scale wind facility actively being developed in the area.

5. Plaintiff MAREC is a coalition of diverse wind and renewable energy developers, equipment manufacturers, and public interest organizations. MAREC members have developed wind projects in Ohio (including in Paulding County), and seek to continue developing wind projects in Paulding County. The state’s current setback law has proven to be devastating to their development efforts.

VENUE

6. Under Civ R. 3(C), venue for this action is proper in this Court because Plaintiffs are principally located, in whole or in part, in Paulding County; H.B. 483 was adopted in Paulding County; and a substantial part of the events giving rise to this action occurred or will occur in Paulding County.

JURISDICTION OVER DECLARATORY JUDGMENT

7. This civil action against the State seeks declaratory relief under the Declaratory Judgment Act, Revised Code 2721.01, *et seq.* Accordingly, it falls within the original jurisdiction of this Court.

8. The Plaintiffs have standing to bring this action because they are challenging the constitutional validity of portions of a statute (H.B. 483) that increase the statutory minimum wind turbine setbacks, which increase adversely affects the Plaintiffs if allowed to stand.

9. A justiciable cause exists between the parties in that the State's enactment of H.B. 483 deprives Plaintiffs of full and free use of their property.

FACTS

10. Plaintiffs incorporate the foregoing Paragraphs as if fully restated herein.

11. In March of 2014, State Representative Ron Amstutz introduced legislation known as the Mid-Biennium Review ("MBR") for fiscal year 2015.

12. Originally introduced as one piece of legislation (H.B. 472), the General Assembly divided the MBR into 14 separate bills.

13. The bulk of the MBR package included thirteen "issue-specific" bills addressing the following policy areas: 1) Veterans (H.B. 488); 2) Lease-leaseback agreements (H.B. 489); 3) Gambling, lottery, and casinos (H.B. 491); 4) Agriculture, environmental protection, and

natural resources (H.B. 490); 5) Primary and secondary education (H.B. 487); 6) Higher education (H.B. 484); 7) the Bureau of Workers' Compensation (H.B. 493); 8) the Office of Human Services Innovation (H.B. 485); 9) Workforce development (H.B. 486); 10) CAT, income, and tobacco tax (H.B. 472); 11) Tax administration and enforcement (H.B. 492); 12) Opiate addiction treatment and recovery services (H.B. 369); and 13) Severance tax (H.B. 375).

14. In addition to these thirteen pieces of legislation, the MBR package also included H.B. 483, which failed to contain a specific description and was generically titled the "General MBR." H.B. 483 addressed state funding, tax reform, appropriations for social programs, and various governmental operational issues. The stated purpose of the bill was "to make operating and other appropriations and to provide authorization and conditions for the operation of state programs."

15. The 820-page General MBR amended 267 separate sections of the Revised Code, and enacted 59 entirely new Revised Code sections while repealing eight others.

16. H.B. 483 addressed funding-related budgetary items, such as: 1) the submission of financial reports for state agencies and affiliates;¹ 2) the creation and elimination of funds and fund distribution;² 3) compensation of public officials;³ and 4) fees for services provided by state departments.⁴

17. Yet, H.B. 483 also included provisions that addressed a wide range of unrelated and diverse policy issues, such as: 1) state museum operations;⁵ 2) legal advertisements and public notice requirements;⁶ 3) agreements between state agencies and political subdivisions;⁷ 4)

¹ See e.g., H.B. 483, 130th Gen. Assemb. §§ 173.47; 175.04; 175.053; 340.08; and 4141.20.

² See e.g., *id.* at §§ 193.07; 3701.83; 3737.02; 4141.09; 4141.131; 4511.191; and 4737.045.

³ See e.g., *id.* at §§ 9.37; 193.03; 2101.026; and 3772.02.

⁴ See e.g., *id.* at §§ 173.381; 3701.34; and 3721.02.

⁵ *Id.* at §§ 5.077 and 307.6910.

⁶ *Id.* at §§ 7.10; 7.16; and 125.182.

⁷ *Id.* at § 9.482.

signs containing the international symbol of access;⁸ 5) special Olympics;⁹ 6) cybersecurity operations of the state;¹⁰ 7) paper case records of child abuse or neglect;¹¹ 8) community-based long term care services, certificates, and contracts;¹² 9) federal-military agencies and missions;¹³ 10) county transit system franchises;¹⁴ 11) addiction and mental health services;¹⁵ 12) jail space;¹⁶ 13) housing of dangerous wild animals;¹⁷ 14) dog registration;¹⁸ 15) children services;¹⁹ 16) bingo licenses;²⁰ 17) lottery and casino winnings;²¹ 18) educational opportunities for individuals without high school diplomas;²² 19) student athlete status;²³ 20) information disclosed through campaign materials;²⁴ 21) long-term care facilities and certificates of need;²⁵ 22) permits to sell beer;²⁶ 23) disability vehicle placards;²⁷ 24) testing for Lyme disease;²⁸ 25) drug prescription conditions;²⁹ 26) cosmetic and massage therapy;³⁰ 27) gambling disorder endorsements and chemical dependency counselor licenses;³¹ 28) job and family services and

⁸ *Id.* at § 9.54.

⁹ *Id.* at § 122.12.

¹⁰ *Id.* at § 125.18.

¹¹ *Id.* at § 149.38.

¹² *Id.* at § 173.381.

¹³ *Id.* at §§ 193.01; 193.03; 193.05; and 193.09.

¹⁴ *Id.* at §§ 306.04; 306.14; and 307.863.

¹⁵ *Id.* at §§ 340.01; 340.021; 340.033; 340.034; 340.08; 340.09; 340.20; 5119.25; 5119.362; 5119.363; 5119.364; 5119.365; and 5122.36.

¹⁶ *Id.* at §§ 341.12 and 341.121.

¹⁷ *Id.* at § 935.12.

¹⁸ *Id.* at § 955.06.

¹⁹ *Id.* at §§ 2151.417; 2152.19; 5103.05; 5103.051; 5139.12; and 5139.36.

²⁰ *Id.* at § 2915.08.

²¹ *Id.* at §§ 3123.89 and 3123.90.

²² *Id.* at §§ 3313.617; 3313.902; 3314.38; 3317.23; 3317.24; and 3345.86.

²³ *Id.* at § 3345.56.

²⁴ *Id.* at § 3517.20.

²⁵ *Id.* at §§ 3702.511; 3702.52; 3702.526; and 3702.59.

²⁶ *Id.* at § 4303.021.

²⁷ *Id.* at § 4503.44.

²⁸ *Id.* at §§ 4715.15; 4723.433; 4730.093; 4731.77; and 4741.49.

²⁹ *Id.* at §§ 4715.302; 4723.487; 4725.092; 4730.53; and 4731.055.

³⁰ *Id.* at §§ 4731.15 and 4731.155.

³¹ *Id.* at §§ 4758.01; 4758.02; 4758.20; 4758.21; 4758.23; 4758.24; 4758.26; 4758.28; 4758.29; 4758.30; 4758.31; 4758.35; 4758.36; 4758.48; 4758.50; 4758.51; 4758.55; 4758.62; 4758.63; 4758.64; and 4758.71.

public assistance programs;³² 29) developmental disabilities and related treatment services,³³ and 30) highway naming.³⁴

18. As introduced, H.B. 483 was the subject of significant debate in both the House and Senate. The House Finance and Appropriations committee held seven public hearings before approving the bill, while the Senate Finance committee held five hearings. However, on May 20, 2014, during the 12th and final H.B. 483 hearing, the Senate Finance committee adopted over 120 new amendments to the bill, which were part of an omnibus package addressing tax cuts, property valuation challenges, municipal tax reports, and dozens of other matters. While some of these proposals had been addressed during the committee hearing process, the package also contained a never publicly disclosed or even discussed amendment that nearly tripled the statutory minimum wind turbine setback distance from property lines. The *ad hoc* appearance of the setback provisions in H.B. 483 left impacted landowners and wind energy developers stunned.

19. The Senate Finance committee did not allow for any public testimony on the wind setback provision whatsoever—not from impacted landowners, the wind industry, or anyone else. Senators did not discuss the setback language in committee. They simply included the seemingly obscure amendment in the dense omnibus package and quickly reported it out of committee.

20. The very next day, on May 21, 2014, the full Senate convened session to vote on amended substitute H.B. 483. Senators collectively spent barely ten minutes deliberating the wind setback amendment. Immediately recognizing the total absence of public dialogue and input on the subject throughout the H.B. 483 hearing process, Senator Michael Skindell stated on

³² *Id.* at §§ 5101.061; 5101.90; 5101.91; and 5101.92.

³³ *Id.* at § 5123.01; 5123.011; 5123.012; 5123.0420; 5123.162; 5123.19; and 5126.42.

³⁴ *Id.* at § 5533.051.

the Senate floor that the issue should have been “debated [in] a reasonable manner, not just tucked away without any public discussion in a bill.”³⁵ Nevertheless, the Senate passed H.B. 483 that day by a party-line vote of 24-8.

21. During the floor discussion, Senator William Seitz argued that the amendment merely assured setbacks would be measured from the property line as opposed to a neighboring house.³⁶ Seitz failed to note that the law already contained a separate setback from a property line equal to 1.1 times the turbine height. Transparent public discussion of this amendment, including landowner and wind industry input, could have easily averted this apparent confusion.

22. Following Senate passage, the bill headed to a “conference committee” between the two chambers for purposes of negotiating a final version. After one conference committee meeting, on June 10, 2014, the General Assembly delivered finalized H.B. 483 to Governor John Kasich complete with the unchanged wind turbine setback language. He signed the bill six days later.

23. Concurrent with its consideration of H.B. 483, in April of 2014 Senator Troy Balderson introduced S.B. 310, an energy (non-MBR) bill that proposed to freeze Ohio’s Renewable Portfolio Standard (“RPS”) and Energy Efficiency Resource Standard (“EERS”). The RPS/EERS law establishes annual percentage benchmarks for renewable energy resources (including wind) and energy efficiency that utilities must achieve each year for purposes of compliance. S.B. 310 also proposed a 21-member study committee to conduct a two-year cost-benefit analysis of the law, and during that time period the percentage benchmarks were to remain at 2014 levels.

³⁵ Senator Michael Skindell, address to the Ohio Senate (May 21, 2014), available at the Ohio Channel, <http://www.ohiochannel.org/video/senate-session-may-21-2014-part-2> (Last accessed November 8, 2018).

³⁶ See *Id.*

24. The House and Senate held nine hearings on S.B. 310. Legislators heard testimony from dozens of stakeholders and spent countless hours discussing, debating, and analyzing all aspects of the bill, which included a diverse array of proposals pertaining solely to renewable energy.

25. Considered during the same time period and passed within a week of H.B. 483, S.B. 310 represented a clear opportunity for the General Assembly to properly engage farmers, the wind industry, and the public on the issue of wind turbine setbacks.

26. Alternatively, the General Assembly could have included wind setback language as part of the Agriculture, Environmental Protection, and Natural Resources MBR bill—another potentially appropriate vehicle for the proposal. Instead, lawmakers chose to avoid engaging stakeholders or properly vetting the subject in an appropriate bill in favor of slipping the setback amendment into the voluminous, unrelated H.B. 483.

27. After the bill’s passage, wind developers immediately predicted that the setback amendment would create a moratorium on new wind project development in Ohio.³⁷ This prediction was accurate: prior to enactment of H.B. 483, twelve commercial-scale wind farms were approved by the Ohio Power Siting Board (“OPSB”);³⁸ but since the bill’s passage, there have been zero. Every Ohio wind project under development has been abandoned or stalled, and even a hypothetical compliant project would be substantially reduced in size. Meanwhile, private demand for wind energy has skyrocketed.

28. Amended Substitute H.B. 483, as enacted by the 130th General Assembly, is a classic example of “logrolling” – the practice of combining numerous unrelated proposals to appeal to legislators that may support the entire proposal in order to secure some part of it. The

³⁷ See “Industry: Setback changes will end new wind farms in Ohio,” *Midwest Energy News*, June 19, 2014, <https://energynews.us/2014/06/19/midwest/industry-setback-changes-will-end-new-wind-farms-in-ohio/>.

³⁸ See <https://www.opsb.ohio.gov/siting-case-breakdown/approved-cases/>.

bill egregiously combines dozens of wholly unrelated topics into one large piece of legislation. The wind setback amendment in particular shares no common purpose or relationship with other topics and issues addressed in H.B. 483, the stated objective of which is to “make operating and other appropriations and to provide authorization and conditions for the operation of state programs.” The Senate added the wind setback language to H.B. 483 purely as a tactical measure to ensure passage as part of the large, disparate package.

H.B. 483's WIND TURBINE SETBACK PROVISIONS

29. The H.B. 483 provision at issue amends R.C. § 4906.20. Prior to H.B. 483, the minimum wind turbine setback distance from a neighboring property line was “1.1 times the height of a turbine.” The minimum setback from a habitable structure was 1,125 feet measured from the tip of the turbine blade.

30. H.B. 483 replaced the property line setback with the much longer statutory minimum habitable structure setback distance. The provision of the bill at R.C. § 4906.20(B)(2)(a) reads:

(a) The rules also shall prescribe a minimum setback for a wind turbine of an economically significant wind farm. That minimum shall be equal to a horizontal distance, from the turbine's base to the property line of the wind farm property, equal to one and one-tenth times the total height of the turbine structure as measured from its base to the tip of its highest blade and be at least one thousand one hundred twenty-five feet in horizontal distance from the tip of the turbine's nearest blade at ninety degrees to the exterior of property line of the nearest, habitable, residential structure, if any, located on adjacent property at the time of the certification application.

31. Pursuant to this language, the state now requires all wind turbines to be at least 1,125 in distance from any adjacent property line as measured from the tip of the blade.

32. According to OPSB wind project siting applications, as well as company records, prior to H.B. 483 wind developers planned to build over 3,300 megawatts of new wind energy projects in Ohio. Economic analyses estimate these projects could bring over \$4.2 billion in local

economic investment, creating over 13,000 Ohio-based jobs. Over the life of the projects, local governments would receive an estimated \$660 million in taxes, approximately seventy percent of which would flow to the local school systems in which the projects are located.³⁹

33. Rural land owners often earn as much as \$15,000 per wind turbine annually for leasing their property to be part of a wind farm. In the aggregate, Ohio landowners (including landowner Plaintiffs) could earn over \$440 million in lease payments to host the wind turbines on their farms over the life of the projects.

34. The energy generated from proposed wind projects would be able to supply the electricity needs of more than 900,000 Ohio homes.

35. Major corporations are increasingly seeking low-cost wind power to meet growth, reinvestment, and sustainability goals. Fortune 500 companies, including manufacturers, advanced technology firms, and other non-utility customers recently accounted for half of the total renewable power purchased in the United States. Renewable energy has become a difference-maker when these companies choose to expand or relocate. The current setback law is placing Ohio (including Paulding County) at a competitive disadvantage.

36. MAREC members have spent millions of dollars developing wind projects in Paulding County. They remain committed to building projects in Paulding County, but absent court intervention, the revisions to R.C. § 4906.20 will continue to harm development and deprive local landowners and communities of the substantial economic and environmental benefits of wind energy.

³⁹ A Renewable America, *Blowing in the Wind: Ohio's Overly Restrictive Wind Setback Law is Putting Billions in New In-State Investment at Risk*, (May, 2017), https://static1.squarespace.com/static/58ecc722197aea316e9b93fc/t/59480439725e25bf7ae33cab/1497891904817/ARA_Ohio_Wind_Setback_Report_5.25.17.pdf. (accessed November 7, 2018).

37. Plaintiffs Barbara Jean Morris, Ronnie and Victoria Kadesch, and Richard King would like to host wind turbines on their property and reap the corresponding economic and collective environmental benefits. The revisions to R.C. § 4906.20 will continue to prevent them from doing so and from being able to fully and freely use and enjoy their land.

FIRST CLAIM FOR RELIEF
(Violation of Single-Subject Rule)

38. Plaintiffs incorporate the foregoing Paragraphs as if fully restated herein.

39. Section 15(D), Article II of the Ohio Constitution provides:

(D) No bill shall contain more than one subject, which shall be clearly expressed in its title. No law shall be revised or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections amended shall be repealed.

40. The primary purpose of H.B. 483 was to make operating and other appropriations and to provide authorization and conditions for the operation of state programs. Consistent with this purpose, the bill adjusted \$75 million in appropriations to the state General Revenue Fund, as well as 27 other state funds—affecting twenty different state agencies. Other budget-related H.B. 483 topics included the expansion of treatment programs for victims of substance abuse and various tax reform measures.

41. Yet, H.B. 483 also included numerous non-budgetary provisions that had wide-ranging impacts and were ultimately beyond the scope of the bill's purpose. Random and unrelated H.B. 483 policy provisions included language reducing campaign material disclosure requirements for political entities, creating a task force to examine employment barriers facing the deaf and blind, and requiring residential care facilities to provide specified information to local agencies. In addition, the revision to R.C. § 4906.20 contained within H.B. 483 nearly tripled the minimum property line setback distance for wind turbines.

42. The revision to R.C. § 4906.20 is not a budgetary provision, does not make any appropriation, and does not provide authorizations or conditions for state programs.

43. The revision to R.C. § 4906.20 comprises one sentence in an 820-page budget bill, which is totally unrelated to the bill's subject—the state's fiscal MBR.

44. There was no debate on the revision to R.C. § 4906.20 during the committee hearing process and no opportunity for public input. One Senator pointed this out on the Senate floor and another offered a confused interpretation of the amendment.

45. Regulating the siting of wind turbines is not related in any way to the other provisions of H.B. 483. There is no common purpose or relationship between wind turbine setback distances and any other H.B. 483 provision, and there is no discernible, practical, rational, or legitimate reason for adding the provision to the MBR. It is apparent that the General Assembly tactically combined the provisions in H.B. 483 in order to assure their passage where none might have passed individually, especially a functional wind energy moratorium.

46. Had it wished to properly address the issue of siting wind turbines in the spring of 2014, the General Assembly had two appropriate vehicles in which to do so—H.B. 490 (Energy MBR) and S.B. 310 (freezing the Renewable Portfolio Standard), the latter of which was signed into law. It failed to do so.

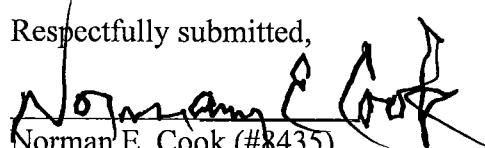
47. The wind setback provisions are unconstitutional in that the General Assembly passed them in violation of the single-subject rule found in Section 15(D), Article II of the Ohio Constitution.

WHEREFORE, Plaintiff prays that this Court enter judgment declaring and ordering the following:

A. A declaration that the H.B. 483 Wind Turbine Setback provisions are unconstitutional as they were passed in violation of the single-subject rule contained in Article II, Section 15 of the Ohio Constitution;

B. A preliminary and permanent injunction prohibiting Defendant from enforcing the H.B. 483 Wind Turbine Setback provisions; and

C. For such other relief as the Court may deem proper.

Respectfully submitted,

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